



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR94-657

Dear Mr. Giddings:

On behalf of the University of Texas System ("UT"), you ask this office to reconsider Open Records Letter No. 94-255, issued by this office on June 28, 1994. Your request was assigned ID# 28035.

In Open Records Letter No. 94-255, this office concluded that an administrator's notes were not excepted from public disclosure under the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(B)(i), because they were reviewed by other administrators. The letter went on to say that even if the notes had remained in the sole possession of the administrator and were confidential under FERPA, they would have to be released to the student requestor under section 552.114 of the Open Records Act. The drafter appears to have addressed both possibilities because the notes were not submitted to this office and it was not clear whether others had had access to them.

You ask us to reconsider the portion of the letter that discusses notes "taken by an administrator that have not been shared with other university employees or administrators." Specifically, you ask us to reconsider our analysis or to withdraw it "since the issues raised in this particular open records request can be fully resolved" by section 552.108.

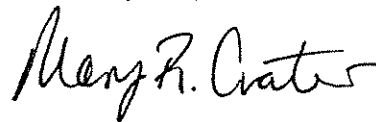
It is not appropriate for this office either to withdraw or to reconsider Open Records Letter No. 94-255 for the following reasons. First, we note that UT did not raise and thus waived section 552.108 with respect to the administrator's notes in its original request for a ruling from this office. Therefore, the availability of the notes cannot be

resolved under that provision. Second, you have confirmed that the notes at issue were shared with other university employees or administrators and you do not disagree with our conclusion that these notes are not confidential under FERPA. Given that you agree with the letter's conclusion that the notes are not confidential under FERPA, you ask us, in essence, to address an abstract legal question. The Open Records Act gives the attorney general the authority to issue rulings on whether particular records are excepted from required public disclosure. It does not give the attorney general the authority to rule on abstract legal questions.

In response to your concerns that the discussion to which UT objects was, in hindsight, unnecessary, and that it could have future implications, we note that open records letters generally do not have precedential effect. In addition, we remind you that UT is always free to submit an opinion request asking the opinion committee to address these issues in an attorney general opinion. See Gov't Code ch. 402.

If you have questions, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 28035

cc: Mr. James Hitselberger
University of Texas at Austin
BUR 536
Austin, Texas 78712